

PATENT

Attorney's Docket No. 2570-CIP 4

COMBINED DECLARATION AND POWER OF ATTORNEY
(ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL,
CONTINUATION OR CIP)

As a below named inventor, I hereby declare that:

TYPE OF DECLARATION

This declaration is of the following type: (check one applicable item below)

- ☐ original
☐ design
☐ supplemental

NOTE: If the declaration is for an International Application being filed as a divisional, continuation or continuation-in-part application do not check next item; check appropriate one of last three items.

- ☐ national stage of PCT

NOTE: If one of the following 3 items apply then complete and also attach ADDED PAGES FOR DIVISIONAL, CONTINUATION OR CIP.

- ☐ divisional
☐ continuation
☒ continuation-in-part (CIP)

INVENTORSHIP IDENTIFICATION

WARNING: If the inventors are each not the inventors of all the claims an explanation of the facts, including the ownership of all the claims at the time the last claimed invention was made, should be submitted.

My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

TITLE OF INVENTION

A Sterile Kit for Holding a Single Use, Expandable Structure Intended for Deployment
in Bone

SPECIFICATION IDENTIFICATION

the specification of which: (complete (a), (b) or (c))

- (a) ☐ is attached hereto.
(b) ☒ was filed on August 15, 1997 as ☒ Serial No. 08/ 911,805
or ☐ Express Mail No., as Serial No. not yet known _____
and was amended on _____ (if applicable).

NOTE: Amendments filed after the original papers are deposited with the PTO which contain new matter are not accorded a filing date by being referred to in the declaration. Accordingly, the amendments involved are those filed with the application papers or, in the case of a supplemental declaration, are those amendments claiming matter not encompassed in the original statement of invention or claims. See 37 CFR 1.67.

- (c) ☐ was described and claimed in PCT International Application No. _____ filed on _____
and as amended under PCT Article 19 on _____ (if any).

ACKNOWLEDGEMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37, Code of Federal Regulations, § 1.56

(also check the following item, if desired)

- ☐ In compliance with this duty there is attached an information disclosure statement in accordance with 37 CFR 1.98.

PRIORITY CLAIM (35 U.S.C. § 119)

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed.

(complete (d) or (e))

- (d) ☒ no such applications have been filed.
- (e) ☐ such applications have been filed as follows.

NOTE: Where item (c) is entered above and the International Application which designated the U.S. itself claimed priority check item (e), enter the details below and make the priority claim.

A. PRIOR FOREIGN/PCT APPLICATION(S) FILED WITHIN 12 MONTHS (6 MONTHS FOR DESIGN) PRIOR TO THIS APPLICATION AND ANY PRIORITY CLAIMS UNDER 35 U.S.C. § 119

COUNTRY (OR INDICATE IF PCT)	APPLICATION NUMBER	DATE OF FILING (day, month, year)	PRIORITY CLAIMED UNDER 37 USC 119
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO

ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION

NOTE: If the application filed more than 12 months from the filing date of this application is a PCT filing forming the basis for this application entering the United States as (1) the national stage, or (2) a continuation, divisional, or continuation-in-part, then also complete ADDED PAGES TO COMBINED DECLARATION AND POWER OF ATTORNEY FOR DIVISIONAL CONTINUATION OR CIP APPLICATION for benefit of the prior U.S. or PCT application(s) under 35 U.S.C. § 120.

POWER OF ATTORNEY

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith. (List name and registration number)

Ralph G. Hohenfeldt (17,717)
Daniel D. Ryan (29,243)

Allan O. Maki (20,623)
Philip P. Mann (30,960)

(check the following item, if applicable)

- ☐ Attached as part of this declaration and power of attorney is the authorization of the above-named attorney(s) to accept and follow instructions from my representative(s).

SEND CORRESPONDENCE TO

DIRECT TELEPHONE CALLS TO:
(Name and telephone number)

Daniel D. Ryan
RYAN, MAKI, MANN & HOHENFELDT, S.C.
633 West Wisconsin Avenue
Suite 1900
Milwaukee, Wisconsin 53203

Daniel D. Ryan
(414) 271-6555

DECLARATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

SIGNATURE(S)

NOTE: Carefully indicate the family (or last) name as it should appear on the filing receipt and all other documents.

Full name of sole or first inventor

MARK (GIVEN NAME) A (MIDDLE INITIAL OR NAME) REILEY (FAMILY (OR LAST NAME))
 Inventor's signature _____
 Date 6/19/98 Country of Citizenship USA
 Residence PIEDMONT, CALIFORNIA
 Post Office Address 304 PALA AVENUE
 PIEDMONT, CALIFORNIA 94611

Full name of second joint inventor, if any

ARIE (GIVEN NAME) (MIDDLE INITIAL OR NAME) SCHOLTEN (FAMILY (OR LAST NAME))
 Inventor's signature _____
 Date 6/19/98 Country of Citizenship USA
 Residence FREMONT, CALIFORNIA
 Post Office Address 4175 TAMAYO STREET
 FREMONT, CALIFORNIA 94536

Full name of third joint inventor, if any

KAREN (GIVEN NAME) D (MIDDLE INITIAL OR NAME) TALMADGE (FAMILY (OR LAST NAME))
 Inventor's signature _____
 Date 6/19/98 Country of Citizenship USA
 Residence PALO ALTO, CALIFORNIA
 Post Office Address 2320 BRYANT STREET
 PALO ALTO, CALIFORNIA 94301

Full name of fourth joint inventor, if any

ROBERT (GIVEN NAME) M (MIDDLE INITIAL OR NAME) SCRIBNER (FAMILY (OR LAST NAME))
 Inventor's signature _____
 Date 5/29/98 Country of Citizenship USA
 Residence LOS ALTOS, CALIFORNIA
 Post Office Address 1133 MIGUEL AVENUE
 LOS ALTOS, CALIFORNIA 94024

Full name of fifth joint inventor, if any

MICHAEL (GIVEN NAME) L (MIDDLE INITIAL OR NAME) REO (FAMILY (OR LAST NAME))
 Inventor's signature _____
 Date 6/18/98 Country of Citizenship USA
 Residence REDWOOD CITY, CALIFORNIA
 Post Office Address 701 BALTIC CIRCLE NO. 731
 REDWOOD CITY, CALIFORNIA 94065

CHECK PROPER BOX(ES) FOR ANY OF THE FOLLOWING ADDED PAGE(S) WHICH
FORM A PART OF THIS DECLARATION

☐ Signature for sixth and subsequent joint inventors. Number of pages added _____

...

☐ Signature by administrator(trix), executor(trix) or legal representative for deceased or
incapacitated inventor. Number of pages added _____

...

☐ Signature for inventor who refuses to sign or cannot be reached by person authorized under 37
CFR 1.47. Number of pages added _____

...

☒ Added pages to combined declaration and power of attorney for divisional, continuation, or
continuation-in-part (CIP) application.

☒ Number of pages added 2

...

☐ Authorization of attorney(s) to accept and follow instructions from representative

...

*(If no further pages form a part of this declaration then end this declaration with this
page and check the following item:)*

☐ This declaration ends with this page

**ADDED PAGE TO COMBINED DECLARATION AND POWER OF ATTORNEY
FOR DIVISIONAL, CONTINUATION OR C-I-P APPLICATION**

(complete this part only if this is a divisional, continuation or C-I-P application)

CLAIM FOR BENEFIT OF EARLIER U.S./PCT APPLICATION(S) UNDER 35 U.S.C. 120

I hereby claim the benefit under Title 35, United States Code, S 120 of any United States application(s) or PCT international application(s) designating the United States of America that is/are listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in that/those prior application(s) in the manner provided by the first paragraph of Title 35, United States Code, S 112, I acknowledge the duty to disclose information that is material to the examination of this application, namely, information where there is substantial likelihood that a reasonable Examiner would consider it important in deciding whether to allow the application to issue as a patent, which occurred between the filing date of the prior application(s) and the national or PCT international filing date of this application.

**PRIOR U.S. APPLICATIONS OR PCT INTERNATIONAL APPLICATIONS
DESIGNATING THE U.S. FOR BENEFIT UNDER 35 USC 120:**

U.S. APPLICATIONS	U.S. FILING DATE	Status (CHECK ONE)		
		Patented	Pending	Abandoned
1. 0 8 / 871,114	06/09/1997		x	
2. 0 8 / 659,678	06/05/1996		x	
3. 0 8 / 485,394	06/07/1995			x
4. 0 8 / 188,224	01/26/1994			x

PCT APPLICATIONS DESIGNATING THE U.S.

PCT APPLICATION NO.	PCT FILING DATE	U.S. SERIAL NOS. ASSIGNED (if any)
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

**DETAILS OF FOREIGN APPLICATION FROM WHICH PRIORITY APPLICATION
CLAIMED UNDER 35 USC 119**

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2
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PATENT

Attorney Docket No. 2570-CIP 4

Applicant or Patentee: Mark A. Reiley et al.
Serial or Patent No.: 08/ 911,805
Filed or Issued: August 15, 1997
For: A Sterile Kit for Holding a Single Use, Expandable Structure Intended for Deployment in Bone

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY
STATUS (37 CFR 1.9(F) and 1.27(c) - SMALL BUSINESS CONCERN**

I hereby declare that I am

 the owner of the small business concern identified below:
 x an official of the small business concern empowered to act on behalf of the
concern identified below:

NAME OF CONCERN Kyphon Inc.
ADDRESS OF CONCERN 120 Independence Drive
Menlo Park, California 94025

I hereby declare that the above identified small business concern qualifies as a small business concern as defined in 13 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under Section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third-party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed, to and remain with the small business concern identified above with regard to the invention, entitled

A Sterile Kit for Holding a Single Use, Expandable Structure Intended for Deployment in Bone
by inventor(s) Mark A. Reiley; Arie Scholten; Karen D. Talmadge; Robert M. Scribner; and Michael L. Reo

described in

 the specification filed herewith.
 x application serial no. 08/ 911,805, filed August 15, 1997
 patent no. , issued

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below* and no rights to the invention are held by any person, other than the inventor, who could not qualify as a small business concern under 37 CFR 1.9(d) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27).

NAME _____
ADDRESS _____

☐ INDIVIDUAL

☐ SMALL BUSINESS CONCERN

☐ NONPROFIT ORGANIZATION

NAME _____
ADDRESS _____

☐ INDIVIDUAL

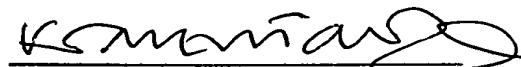
☐ SMALL BUSINESS CONCERN

☐ NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small business entity is no longer appropriate. (37 CFR 1.28(b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING Karen K. Talmadge
TITLE OF PERSON OTHER THAN OWNER President
ADDRESS OF PERSON SIGNING 120 Independence Drive
Menlo Park, California 94025


SIGNATURE

6/19/98
Date

ASSIGNMENT

WHEREAS, Mark A. Reiley of Piedmont, California; Arie Scholten of Fremont, California; Karen D. Talmadge of Palo Alto, California; Robert M. Scribner of Los Altos, California; and Michael L. Reo of Redwood City, California (hereinafter referred to as ASSIGNORS), have invented and own a certain invention entitled A Sterile Kit for Holding a Single Use, Expandable Structure Intended for Deployment in Bone for which application for Letters Patent of the United States has been filed on August 15, 1997 as Serial No. 08/911,805 (attorney's Docket No. 2570-CIP 4);

WHEREAS, Kyphon, Inc. of Menlo Park, California (hereinafter referred to as ASSIGNEE), is desirous of acquiring the entire interest in, to and under said invention and in, to and under Letters Patent or similar legal protection to be obtained therefor in the United States and in any and all foreign countries;

NOW THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that in consideration of the payment of ASSIGNEE to ASSIGNORS of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, and for other good and valuable consideration, ASSIGNORS hereby sell, assign and transfer to ASSIGNEE the full and exclusive right, title and interest to said invention in the United States and its territorial possessions and in all foreign countries and to all Letters Patent or similar legal protection in the United States and its territorial possessions and in any and all foreign countries to be obtained for said invention by said application or any continuation, division, renewal, substitute or reissue thereof or any legal equivalent thereof in a foreign country for the full term or terms for which the same may be granted.

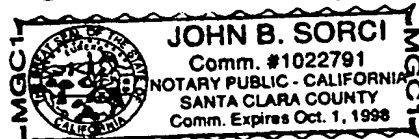
ASSIGNORS hereby covenant that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment and sale;

ASSIGNORS further covenant that ASSIGNEE will, upon its request, be provided promptly with all pertinent facts and documents relating to said application, said invention and said Letters Patent and legal equivalents in foreign countries as may be known and accessible to ASSIGNORS and will testify as to the same in any interference or litigation related thereto and will promptly execute and deliver to ASSIGNEE or its legal representatives any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said application, said invention and said Letters Patent and said equivalents thereof in any foreign country which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS THEREOF, I have hereunto set hand and seal this 19 day
of June, 1998.
Mark A. Reiley
Mark A. Reiley

State of Calif.)
County of Santa Clara) ss.

Personally appeared before me this 19 day of June, 1998,
the above named Mark A. Reiley, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.



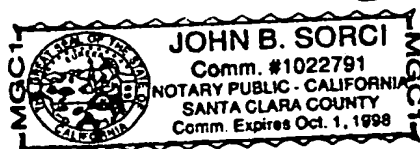
(Seal)

John B. Sorci
Notary Public
My commission expires 1 Oct 98

IN WITNESS THEREOF, I have hereunto set hand and seal this 19 day
of June, 1998.
Arie Scholten
Arie Scholten

State of Calif.)
County of Santa Clara) ss.

Personally appeared before me this 19 day of June, 1998,
the above named Arie Scholten, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.



(Seal)

John B. Sorci
Notary Public
My commission expires 1 Oct 98

IN WITNESS THEREOF, I have hereunto set hand and seal this 19 day
of June, 1998.

Karen D. Talmadge
Karen D. Talmadge

State of Calif.)
County of Santa Clara) ss.

Personally appeared before me this 19 day of June, 1998,
the above named Karen D. Talmadge, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.



(Seal)

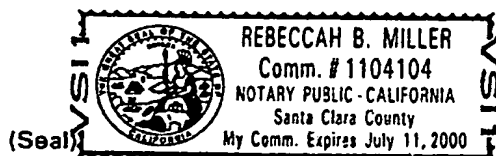
John B. Sorci
Notary Public
My commission expires 1 Oct 98

IN WITNESS THEREOF, I have hereunto set hand and seal this 29 day
of May, 1998.

Robert M. Scribner
Robert M. Scribner

State of CA)
County of Santa Clara) ss.

Personally appeared before me this 29th day of May, 1998,
the above named Robert M. Scribner, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.



(Seal)

Rebecca B. Miller
Notary Public
My commission expires 7/11/2000

* * * * *

IN-WITNESS THEREOF, I have hereunto set hand and seal this 18 day
of JUNE, 1998.

Michael L. Reo
Michael L. Reo

State of California)
County of Santa Clara) ss.

Personally appeared before me this 18th day of June, 1998,
the above named Michael L. Reo, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

HAER. CHOI

Notary Public

My commission expires Jan-31-2002

(Seal)

